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# Limits Of Public Prosecutorial Authority In Plea Bargaining Within The Indonesian Criminal Justice System

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## Abstract

*The determination of judicial competence for Indonesian National Armed Forces (TNI) soldiers who commit general crimes faces normative issues due to differences in construction between Law Number 31 of 1997 concerning Military Justice and Law Number 34 of 2004 concerning the TNI. This study aims to analyze the regulation of judicial competence for TNI soldiers who commit general crimes and to test the legal certainty in determining the judicial forum. This study is a normative legal study using a statutory and conceptual approach. The analysis was conducted on Article 9 of Law 31/1997 and Articles 65 and 74 of the TNI Law using the theory of judicial competence or jurisdiction and Gustav Radbruch's theory of legal certainty. The results of the study indicate that Law 31/1997 establishes the status of soldiers as the basis for military judicial competence (subject-based jurisdiction), while Article 65 of the TNI Law shifts this basis by differentiating competence based on the type of crime (offense-based jurisdiction). This shift has not yet been fully implemented operationally because Article 74 of the TNI Law maintains the validity of Law 31/1997 until the new Military Court Law is enacted. This situation raises legal certainty issues regarding clarity, consistency, and predictability of judicial forums. This problem is not caused by a lack of legal basis, but rather by the existence of two intertwined normative bases in determining judicial competence.*

**Keywords:** Legal Certainty, Judicial Competence, TNI Soldiers.

## INTRODUCTION

IThe reform of Indonesian criminal procedural law through Law Number 20 of 2025 concerning the Criminal Procedure Code represents an important development in the administration of criminal justice. One of its significant innovations is the recognition of guilty plea procedures, commonly associated with plea bargaining. This mechanism allows criminal proceedings to be simplified through an acknowledgment of guilt under legally prescribed conditions. Its introduction reflects the growing importance of procedural efficiency, particularly in addressing lengthy criminal proceedings and the substantial institutional resources required for conventional trials.

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Nevertheless, procedural efficiency cannot be separated from the fundamental principles governing criminal justice. Criminal proceedings constitute an exercise of state authority that may restrict individual liberty. Consequently, every procedural mechanism must preserve the presumption of innocence, legal certainty, equality before the law, and the right to a fair trial. Herawan and Sihotang (2021) identify plea bargaining as an alternative approach to improving judicial efficiency, while emphasizing the importance of its relationship with existing criminal procedural principles.

The principal legal concern arises from the authority granted to public prosecutors to negotiate guilty plea agreements with defendants. Unlike ordinary criminal proceedings, in which criminal responsibility is established through judicial examination, negotiated guilty pleas introduce an agreement between parties possessing unequal institutional power. Public prosecutors represent the state and exercise authority over prosecution, while defendants may face detention, limited legal resources, and uncertainty regarding possible punishment.

This imbalance creates the possibility that defendants may accept negotiated outcomes primarily to avoid the risks associated with ordinary trials. Daughety and Reinganum (2020) demonstrate the importance of evidence disclosure in negotiated criminal proceedings, particularly because informational inequalities may influence defendants' decisions. Therefore, the existence of formal consent does not necessarily establish that a guilty plea reflects an informed and voluntary decision.

Article 78 of Law Number 20 of 2025 establishes requirements for guilty plea procedures, including legal representation, written agreements, judicial approval, and examination of voluntariness. The legislation also requires judicial consideration of supporting evidence. These requirements indicate that prosecutorial authority is not absolute. Nevertheless, the effectiveness of such restrictions depends upon how prosecutorial negotiations are conducted and how judicial supervision is implemented.

Recent scholarship has examined the compatibility of plea bargaining with Indonesian criminal procedural principles. Nasoetion et al. (2025) emphasize legal certainty and substantive justice, while Pratama and Bintoro (2026) identify institutional risks arising from prosecutorial discretion and insufficient judicial control. These studies establish an important foundation for evaluating the relationship between negotiated criminal justice and judicial independence.

The present study develops this discussion by examining two interconnected legal questions. First, how should the limits of public prosecutorial authority in negotiating guilty pleas be determined according to legal certainty and fair trial principles? Second, how should judicial supervision of guilty plea agreements be structured to guarantee the protection of defendants' rights? The central argument is that negotiated criminal justice can only achieve legitimacy when prosecutorial discretion remains legally restricted and judicial supervision functions as an independent substantive safeguard.

## RESEARCH METHODS

This study employs normative legal research, focusing on the examination of legal norms, statutory provisions, and doctrinal principles governing plea bargaining. The statutory approach analyzes Law Number 20 of 2025 concerning the Criminal Procedure Code, particularly provisions regulating guilty pleas and judicial examination. The conceptual approach examines prosecutorial discretion, legal certainty, procedural fairness, and judicial independence. A comparative approach is also employed to identify relevant safeguards developed in other criminal justice systems. The legal materials consist of primary legal sources, particularly Indonesian legislation, and secondary sources comprising academic journal articles addressing plea bargaining and criminal procedural justice. The materials are analyzed qualitatively through systematic and conceptual legal interpretation. The analysis aims to formulate prescriptive arguments concerning the appropriate boundaries of prosecutorial authority and the institutional requirements of effective judicial supervision.

## RESULTS AND DISCUSSION

### A. Limits of Public Prosecutorial Authority in Plea Bargaining Based on Legal Certainty and Fair Trial Principles

Public prosecutors occupy a central position within criminal justice because their authority determines whether criminal allegations proceed to judicial examination. This institutional function becomes increasingly significant when prosecutors are permitted to negotiate guilty pleas. Prosecutorial authority no longer concerns prosecution alone but also influences the procedural choices available to defendants and the potential consequences of admitting criminal responsibility.

The fundamental issue is whether authority to negotiate can be exercised as an unrestricted form of prosecutorial discretion. From the perspective of the principle of legality, every exercise of governmental authority must originate from and remain limited by law. Prosecutorial discretion cannot create independent authority to determine criminal responsibility or impose punishment outside the statutory framework. Hartley and Tillyer (2026) demonstrate that discretionary prosecutorial decisions may be influenced by legal and extralegal considerations, reinforcing the importance of transparent institutional restrictions.

Article 78 paragraph (1) of Law Number 20 of 2025 regulates eligibility for guilty plea procedures by referring to first-time offending, the seriousness of the offense, and willingness to provide compensation or restitution. The use of the expression and/or within these eligibility requirements deserves particular attention because it raises interpretative questions regarding whether the conditions operate cumulatively or alternatively. Different interpretations may produce inconsistent decisions concerning defendants who are eligible to negotiate guilty pleas.

Legal certainty requires that the eligibility criteria be interpreted consistently. If prosecutors possess unrestricted discretion to determine which requirements are sufficient, defendants facing comparable criminal allegations may receive different procedural opportunities. Such inconsistencies would weaken equality before the law and potentially transform plea bargaining into a privilege dependent upon prosecutorial preference rather than an objectively available legal procedure.

Consequently, prosecutorial authority must first be restricted through clear eligibility standards. These standards should identify the applicable offense categories, relevant criminal histories, restitution requirements, and circumstances justifying negotiated sentencing concessions. Prosecutors must provide identifiable

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legal reasons when offering or declining a guilty plea arrangement. This requirement does not eliminate discretion but ensures that discretionary decisions remain accountable to statutory purposes.

A second limitation concerns the substance of negotiations. Article 78 paragraph (7) requires written agreements to contain the charges, anticipated punishment, negotiation outcomes, reasons for sentence reductions, and supporting evidence. This provision indicates that the negotiation process must be documented and legally justified. Prosecutors should not be permitted to promise sentencing outcomes inconsistent with statutory punishment limits or employ unsupported charges as bargaining instruments.

The risk of coercion is particularly relevant where defendants face substantially different sentencing consequences depending upon whether they admit guilt. Finkelstein and Levin (2020) identify the possibility that defendants may accept negotiated punishment despite uncertainty concerning whether they would be convicted at trial. A defendant's decision may therefore reflect an attempt to avoid greater punishment rather than a genuine acknowledgment of criminal responsibility.

This situation challenges the assumption that every formally accepted agreement is voluntary. A negotiated confession may be influenced by psychological pressure, limited financial resources, prolonged detention, or fear of receiving a heavier sentence. Legal certainty must consequently be accompanied by procedural safeguards ensuring that defendants understand both the benefits and disadvantages of accepting an agreement.

The obligation to provide legal representation constitutes another important limitation. Article 78 requires defendants to be accompanied by advocates during the guilty plea process. Legal assistance should not be understood merely as the physical presence of an advocate. Effective representation requires sufficient opportunities to examine evidence, explain legal consequences, evaluate sentencing proposals, and advise defendants without prosecutorial interference.

Daughety and Reinganum (2020) explain that access to relevant evidence affects the fairness of negotiated criminal proceedings. Defendants who lack adequate information cannot meaningfully assess whether the prosecution possesses sufficient evidence to establish guilt. Accordingly, effective legal representation should include timely access to material evidence, including information potentially favorable to the defense.

A further concern involves the relationship between prosecutorial discretion and the principle of material truth. Indonesian criminal procedure cannot permit negotiated agreements to replace the legal requirement that criminal responsibility be supported by evidence. A guilty plea should facilitate procedural simplification without transforming an admission into conclusive proof of guilt.

Langbein (2022), in examining negotiated confessions within German criminal procedure, demonstrates the tensions between bargaining practices and established principles of criminal adjudication. This comparative experience suggests that negotiated justice must remain compatible with the legal traditions and evidentiary obligations of the jurisdiction adopting it.

In Indonesia, Article 78 paragraph (12) requires judicial conviction supported by two lawful items of evidence before a judgment is rendered in accordance with the agreement. This requirement reinforces the distinction between admitting guilt and legally establishing criminal responsibility. Prosecutors therefore cannot rely exclusively upon the defendant's acknowledgment to justify the negotiated outcome.

From the author's perspective, prosecutorial authority in plea bargaining should be understood as a limited procedural competence rather than an independent power to determine guilt or punishment. Its legal boundaries consist of statutory eligibility, transparent negotiation, proportional sentencing proposals, effective defense participation, and sufficient evidentiary foundations.

The principal weakness requiring attention is not the existence of prosecutorial discretion itself, but the possibility that discretionary authority may operate without sufficiently measurable standards. Legal certainty demands that prosecutors explain why a particular defendant qualifies for negotiation, why a specific sentencing concession is justified, and how the proposed agreement complies with criminal procedural principles.

Accordingly, the legitimacy of plea bargaining depends upon restricting prosecutorial authority before an agreement reaches the court. Judicial supervision remains necessary, but it should not become a substitute for lawful and accountable prosecutorial decision-making..

### B. Formulation of Judicial Supervision over Guilty Plea Agreements to Protect Defendants' Rights

Judicial supervision represents the principal institutional safeguard against the misuse of prosecutorial authority in negotiated criminal proceedings. Although prosecutors and defendants may reach an agreement, criminal adjudication remains a judicial function. Consequently, the legal validity of a guilty plea cannot depend exclusively upon the consent of the negotiating parties. Article 78 paragraphs (4) to (10) of Law Number 20 of 2025 provides for judicial examination of guilty plea agreements, including an assessment of whether the acknowledgment was made voluntarily and with adequate understanding. The judge may accept or reject the proposed arrangement, with different procedural consequences following each decision.

The principal question concerns the appropriate intensity of judicial examination. If judges merely confirm that an agreement has been signed and that an advocate was present, judicial supervision risks becoming an administrative formality. Such an approach would allow the substantive determination of criminal responsibility to shift toward negotiations controlled primarily by prosecutors. Pratama and Bintoro (2026) emphasize that judicial oversight is essential to controlling prosecutorial discretion and preventing opaque bargaining practices. Their analysis supports the proposition that judicial supervision must extend beyond verifying the existence of procedural documents.

First, judges should independently examine whether defendants have entered into agreements voluntarily. Voluntariness must be assessed through direct judicial questioning rather than inferred solely from written declarations. Defendants should explain their understanding of the charges, the possible punishment, the rights being relinquished, and the consequences of rejecting the agreement. The judicial examination must also consider circumstances that may undermine genuine consent. These include threats, misleading information, psychological pressure, inadequate legal assistance, and excessive sentencing disparities. The existence of an advocate should be treated as an important

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safeguard but not as conclusive evidence that the defendant's decision was free from improper influence.

Maryam (2026) identifies the potential tension between procedural efficiency and defendants' human rights in Indonesia's guilty plea framework. This concern demonstrates why judicial verification must evaluate the actual circumstances surrounding consent rather than rely exclusively upon formal compliance. Second, judges must independently assess the evidentiary foundation of the proposed agreement. A guilty plea cannot eliminate the state's responsibility to establish criminal liability through legally acceptable evidence. The statutory requirement of two lawful items of evidence provides a basis for substantive judicial examination.

The court should determine whether the evidence reasonably supports the elements of the alleged offense and whether the defendant's admission is consistent with the factual circumstances. Where material inconsistencies remain unresolved, the judge should reject the negotiated procedure and allow the case to proceed through ordinary examination. This approach also protects the presumption of innocence. A defendant who enters negotiations should not automatically be treated as guilty before judicial determination. Negotiation constitutes a procedural opportunity, not an independent substitute for the judicial establishment of criminal responsibility.

Third, judicial supervision should include examination of sentencing proportionality. The existence of an agreement does not automatically establish that the proposed punishment is legally appropriate. Judges must evaluate whether sentencing concessions are consistent with statutory requirements, the seriousness of the offense, and relevant mitigating circumstances. Simatupang and Mahardhika (2026) explain that the Indonesian guilty plea mechanism operates within a more restricted statutory framework than the United States model. This distinction is important because comparative legal mechanisms cannot be adopted without considering differences in criminal procedure and judicial authority.

Fourth, judicial independence must be preserved throughout the approval process. Judges should neither participate as prosecutorial bargaining agents nor merely endorse negotiated outcomes. Their institutional responsibility is to examine legality, voluntariness, evidentiary sufficiency, and fairness independently. The German experience discussed by Langbein (2022) illustrates how judicial participation in negotiated confessions may create tensions concerning the impartiality of criminal adjudication. Indonesia should therefore maintain a clear institutional distinction between the negotiation conducted by prosecutors and defendants and the judicial assessment of the resulting agreement.

Fifth, judicial decisions concerning guilty plea agreements should contain sufficient legal reasoning. An approval or rejection should identify the relevant statutory requirements and explain how the agreement satisfies or fails to satisfy them. Reasoned decisions strengthen transparency and permit evaluation of whether comparable cases receive consistent treatment.

The Supreme Court Circular Letter Number 1 of 2026 provides technical guidance for implementing guilty plea procedures, including judicial examination of eligibility and procedural requirements. Nevertheless, technical guidance should be supported by consistent judicial practice and clear standards concerning the substantive assessment of voluntariness and evidence. From the author's perspective, an appropriate model of judicial supervision should combine procedural verification with substantive examination. Procedural verification concerns legal representation, statutory eligibility, documentation, and the proper timing of the agreement. Substantive examination concerns voluntariness, evidentiary sufficiency, proportionality, and the protection of fundamental procedural rights.

Judges should also possess effective authority to reject agreements that fail these requirements without allowing the rejected negotiation itself to prejudice the defendant during subsequent proceedings. Protection against such prejudice is essential because defendants should not be punished procedurally for exercising their right to ordinary adjudication. The proposed model places judicial supervision at the center of negotiated criminal justice without eliminating the legitimate role of prosecutorial discretion. Prosecutors retain authority to initiate and negotiate agreements, while judges retain independent responsibility for determining whether those agreements satisfy the requirements of criminal justice. Ultimately, judicial supervision must function as a substantive constitutional and procedural safeguard. Its purpose is not merely to ensure that agreements are formally valid, but to prevent efficiency-oriented criminal proceedings from compromising individual liberty, equality before the law, and the integrity of judicial decision-making..

## CONCLUSION

Prosecutorial authority in plea bargaining under Law Number 20 of 2025 constitutes a legally restricted procedural competence rather than an unrestricted power to determine criminal responsibility. Its boundaries must be established through statutory eligibility requirements, transparent negotiations, proportional sentencing proposals, effective legal representation, and adequate evidentiary foundations. Legal certainty requires consistent standards to prevent arbitrary differences in the treatment of defendants. Judicial supervision must extend beyond formal approval of negotiated agreements. Judges should independently examine voluntariness, informed consent, evidentiary sufficiency, sentencing proportionality, and procedural fairness. Strengthening substantive judicial review and reasoned decision-making is necessary to preserve judicial independence and protect defendants against coercive negotiations. The effectiveness of plea bargaining should therefore be measured not only by procedural efficiency but also by its ability to maintain accountability and safeguard fundamental rights within Indonesia's criminal justice system.

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